

REMARKS

Claims 1-2, 8-10, 13 and 15-24 are canceled without prejudice or disclaimer of the subject matter therein. Claims 3, 7 and 11 are amended to be in independent form. Claim 14 is amended to depend from claim 11.

Claim 3 is rejected as obvious over Blomdahl et al. The office action acknowledges that Blomdahl et al. do not disclose the extrusion holes being disposed in the annular lateral wall.

The office action states

it would have been an obvious matter of design choice to make the extrusion holes in the Blomdahl cap to be disposed in the annular lateral wall extending away from the perimeter edge of the cap top wall in order the monolithic compliant extending through the extrusion holes via the extrusion post to tether the cap liner to the grip ring and retain the monolithic compliant member to the cap, since applicant has not disclosed that the extrusion holes being disposed in the annular lateral wall extending away from the perimeter edge of the cap top wall solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the extrusion holes are positioned in an annular upright wall extending from the annular skirt of the cap.

As stated in claim 3, the annular lateral wall is formed to include the extrusion holes. The office action notes this is not taught by Blomdahl et al. and urges such would have been an obvious design choice. This is a conclusion, not a reason. In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teaching to arrive at the claimed invention.¹ The requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from applicant's disclosure.² Blomdahl et al. does not provide any teaching or suggestion for "the annular lateral wall is formed to include the extrusion holes" as stated in claim 3. Accordingly, there is no prima facie case of obviousness and withdrawal of the rejection of claim 3 is requested.

¹ See Ex parte Clapp, 2227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985).

² See, for example, Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 A(Fed. Cir.), cert denied, 488 U.S. 825 (1988).

Claims 4-6 are dependent from claim 3 and recite further limitations not taught or suggested by Blomdahl et al.

Claim 7 has been amended to clarify the annular wall is the annular lateral wall referred to earlier in claim 7. Blomdahl et al. does not disclose the structure recited in claim 7 (see especially applicant's disclosure at page 8, line 27 to page 9, line 11) wherein the annular skirt and annular upright wall is arranged to extend in a vertical direction, each of the top wall and the annular lateral wall is arranged to extend in a horizontal direction to lie in orthogonal relation to the annular upright wall. In Blomdahl et al there is no such structural arrangement and no teaching or suggestion that, as recited in claim 7, one of the annular upright and annular lateral walls is formed to include the extrusion holes. Accordingly, claim 7 avoids Blomdahl et al. and withdrawal of the rejection of claim 7 is appropriate.

Claim 11 is rejected as obvious over Blomdahl et al. The office action acknowledges that Blomdahl et al. do not disclose the extrusion holes being disposed in the annular lateral wall and urges "it would have been an obvious matter of design choice". As explained above with respect to the rejection of claim 3, this conclusion does not provide reasons and fails to provide a prima facie basis for the rejection. Accordingly, claim 11 and dependent claim 12 (which additionally requires "the extrusion posts are arranged to extend vertically to lie in spaced-apart parallel relation to one another" avoid the rejection of record.

Claim 14 has been amended to overcome the rejection under 35 U.S.C. 112 and now depends from claim 11. Claim 14 is allowable for the same reasons as claim 11 and additionally for the recitation of "wherein the extrusion posts extend along radially outwardly extending lines intersecting a central vertical axis extending through the top wall and extend horizontally in circumferentially spaced-apart parallel relation to one another" which is not taught or suggested in Blomdahl et al.

In view of the above, it is submitted that all of the claims (Nos. 3-7, 11-12 and 14) are in condition for allowance and such action is, respectfully, requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (5723-70258).

Respectfully submitted,

BARNES & THORNBURG

A handwritten signature in black ink, appearing to read "Richard B. Lazarus". The signature is fluid and cursive, with a large, stylized initial "R".

Richard B. Lazarus

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